

BEFORE THE  
POSTAL RATE COMMISSION

IN

Dec 16 11 47 AM '98

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COMPLAINT ON POST E.C.S.

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D O C K E T N O . C99-1

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ANSWER OF UNITED PARCEL SERVICE IN  
OPPOSITION TO MOTION OF UNITED STATES  
POSTAL SERVICE TO DISMISS COMPLAINT  
(December 16, 1998)

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STATEMENT OF THE CASE

On October 6, 1998, United Parcel Service ("UPS") filed a complaint with the Postal Rate Commission ("the Commission") concerning the Post E.C.S. service of the United States Postal Service ("the Postal Service"). Post E.C.S. -- or Post Electronic Courier Service -- is an electronic document delivery system which allows customers to send messages and sensitive documents over the Internet for a fee. See Exhibit A to Complaint. The service provides several layers of security, including encryption of the messages sent from the Postal Service web site to the recipient. *Id.* In the near future, Post E.C.S. will also offer an Electronic Postmark system, which will combine tamper detection with a time-and-date stamp. *Id.*

In its complaint concerning this service, UPS sets forth three claims for relief. First, UPS asserts that the Postal Service is violating the Postal Reorganization Act ("the Act") by offering Post E.C.S. without first requesting a recommended decision from the Commission on classification provisions and rates associated with the service. Specifically, UPS alleges that Post E.C.S. is a class of mail or type of mail service

under Sections 3621, 3622, and 3623 of the Act. By offering a new postal service to members of the public without first requesting a recommended decision from the Commission, the Postal Service has unilaterally changed the mail classification schedule in violation of Sections 3622 and 3623 of the Act.

Second, UPS contends that, by offering Post E.C.S. at no charge for the first 30 days a mailer uses the service, the Postal Service is violating Section 3622(b)(3), which requires that each class of mail or type of mail service bear the direct and indirect postal costs attributable to that class or type. Finally, UPS claims in the alternative that the Postal Service is violating the Act by offering Post E.C.S. without first requesting an advisory opinion under Section 3661 of the Act.

On November 5, 1998, the Postal Service filed an answer to the allegations of the complaint and a Motion to Dismiss (“the Motion”). In the Motion, the Postal Service alleges that the Commission lacks authority to determine the status of Post E.C.S. as a “postal” or “nonpostal” service. Alternatively, the Postal Service contends that Post E.C.S. is not a “postal” service and that, since the Commission lacks jurisdiction over “nonpostal” services, the complaint should therefore be dismissed.

UPS files this Answer in opposition to the Postal Service’s Motion.

## II.

### ARGUMENT

#### A. The Commission Has Jurisdiction to Determine Whether Post E.C.S. Is a Postal Service.

It is a well established principle of administrative law that before a federal court considers the question of an agency’s jurisdiction, a plaintiff must exhaust its administrative remedies. General *Atomics v. United States Nuclear Regulatory Commission*, 75 F.3d 536, 541 (9th Cir. 1996), citing *Marshall v. Burlington Northern, Inc.*, 595 F.2d 511, 513 (9th Cir. 1979). The courts have interpreted this principle to

require that “an agency be accorded an opportunity to determine initially whether it has jurisdiction” over a matter. *Id.* See also *federal Power Commission v. Louisiana Power and Light Co.*, 406 U.S. 621, 647 (stating that “while the [agency’s] decision is not the last word, it must assuredly be the first”); *Government of the Territory of Guam v. Sea-Land Service, Inc.*, 958 F.2d 1150, 1155 (D.C. Cir. 1992) (upholding the “well-established rule” that “an agency has jurisdiction to determine the scope of its authority, in the first instance .”) Applying this principle here, it is clear that the Commission has the authority to determine whether Post E.C.S. is or is not mail or a “postal” service that falls within its recommended decision jurisdiction,

Significantly, by repeatedly resolving jurisdictional issues in the past, the Commission itself has consistently adhered to the principle that it has the authority to determine whether a given service falls within its jurisdiction. For example, as recently as Docket No. C96-1, which involved the Postal Service’s Pack & Send packaging service, the Postal Service argued (as it does here) that the Commission did not have jurisdiction to hear the matter because Pack & Send is a nonpostal service. Docket No. C96-1, Memorandum in Support of Motion of the United States Postal Service to Dismiss Proceeding (June 27, 1996), at 4-5. The Commission rejected the Postal Service’s argument, exercised jurisdiction over the complaint for the purpose of deciding whether Pack & Send is a jurisdictional service, and ultimately found that Pack & Send is in fact a postal service. Order No. 1145 (Dec. 16, 1996), at 19. Similarly, in Docket No. R76-1, there was a question about which of a group of “special services” constituted postal services. Again, the Commission entertained the issue and classified the services as postal or nonpostal. Opinion and Recommended Decision,

Docket No. R76-1, Appendix F. See a/so PRC Order No. 193 (Jan, 27, 1978) (in which the Commission decided that it lacked jurisdiction over rates for penalty mail).

In the face of the Commission's long history of asserting its authority to determine whether it has jurisdiction over a particular matter, the Postal Service relies on language taken out of context from Commission Order No. 724 to support its argument that it is not up to the Commission to determine, at the outset, whether Post E.C.S. is a postal service. Motion at 5. However, the Postal Service's reliance on this Order is misplaced. In that case, the Commission did in fact assert jurisdiction over the complaint at issue. Furthermore, the comments in Order No. 724 that are relied upon by the Postal Service dealt with an attack on a Postal Service regulation that did not involve or alter a provision of the Domestic Mail Classification Schedule. The Commission therefore found that the regulation did not present a classification matter within its statutory jurisdiction. Thus, the Commission actually decided the jurisdictional issue, but did not entertain one of the complainants arguments because that matter was not within its classification jurisdiction. On the other hand, Post E.C.S. -- involving a totally new service, not a regulation implementing an existing service -- clearly does present a classification issue.'

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1. In arguing that Post E.C.S. is a nonpostal service, the Postal Service also refers to Commission Order No. 1075 (Sept. 11, 1995). Motion at 12. Like Order No. 724, Order No. 1075 rebuts the Postal Service's argument, since the Commission there exercised its authority to determine whether the service in question was a postal service.

Besides its erroneous reliance on Order No. 724, the Postal Service also refers to prior cases in which parties alleging that particular services were postal in nature filed complaints in federal district courts rather than with the Commission. Although the Postal Service's assertion that a party may seek redress in federal court in such cases is correct, the Postal Service is wrong in arguing that these challenges are therefore limited to that forum. Nothing in the Act restricts parties in this manner, and the mere fact that parties have filed complaints with the courts in other instances does not affect UPS's right to invoke the Commission's Section 3662 jurisdiction in this case. Nowhere does the Act suggest that the Commission and the district courts cannot have concurrent jurisdiction over some matters. On the contrary, the provision of the Act which confers jurisdiction on the federal district courts in postal matters specifically states that "the United States district courts shall have original *but* not exclusive jurisdiction over all actions brought by or against the Postal Service." 39 U.S.C. § 409 (emphasis added).

Finally, the Postal Service argues that the Commission lacks authority to decide whether it has jurisdiction over UPS's complaint because the Commission is unable to grant equitable relief. Motion at 5-6. That argument is also erroneous. The fact that the Commission lacks equitable power to enjoin the Postal Service is irrelevant to the Commission's authority to determine whether it has Section 3662 jurisdiction over a matter. Section 3662 of necessity involves matters in which the Commission lacks power to grant equitable relief, since there are no circumstances in which the Commission may grant such relief. Thus, the Postal Service's argument proves too much: if the Postal Service were correct, a party could never invoke the Commission's Section 3662 jurisdiction.

Read together, Sections 3662 and 409 make clear that regardless of the Commission's equitable powers, a party seeking relief under Section 3662 has the right to invoke the Commission's Section 3662 jurisdiction for matters described in that section, with all of the benefits and limitations ensuing from the party's choice to pursue its claim before the Commission, even if the party may also have the right to seek equitable relief in the district courts.

Accordingly, the Commission should reject the Postal Service's attempt to prevent the Commission from deciding the scope of its Section 3662 authority.

B. Post E.C.S. Is a Domestic Postal Service Which Falls Within the Commission's Jurisdiction.

Although the Governors of the Postal Service are authorized to establish "reasonable and equitable classes of mail," they must do so "in accordance with the provisions of' chapter 36 of title 39. 39 U.S.C. § 3621. Under Section 3622 of the Act, the Postal Service is required to "request the Postal Rate Commission to submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal services if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of this title." 39 U.S.C. § 3622. Because Post E.C.S. is a type of "mail" and therefore is a "postal service," the Postal Service is violating the Act by providing Post E.C.S. without first requesting a recommended 'decision from the Commission.

The Postal Service claims that even if the Commission has the power to decide whether Post E.C.S. is a postal service, UPS's Complaint should be dismissed for two reasons: (1) it argues that Post E.C.S. is not a postal service; and (2) it claims that

Post E.C.S. is not a domestic postal service. Motion at 7-16. For the reasons set forth below, the Postal Service is wrong in both regards.

The Act itself does not define “mail” or “postal services.” Thus, in determining whether a particular service constitutes mail or is postal in nature, the Commission must look to prior case law and Commission opinions. The two primary judicial opinions dealing with the classification of services as postal or nonpostal are *Associated Third Class Mail Users v. United States Postal Service* (“*ATCMU*”), 405 F. Supp. 1109 (D.C. Cir. 1975), and *National Association of Greeting Card Publishers v. United States Postal Service* (“*NAGCP*”), 569 F.2d 570 (D.C. Cir. 1976). In both of these cases, the court gave the term “postal service” its ordinary meaning. See *ATCMU*, 405 F. Supp. at 1115 (finding that “these services would be considered ‘postal services’ in ordinary parlance”), and *NAGCP*, 569 F.2d at 596 (concluding that “a plain reading is the proper reading of section 3622.”) Specifically, the *court* in *ATCMU* held that services should be characterized as postal in nature if they are “very closely related to the delivery of mail.” 405 F. Supp. 1109, 1115. Similarly, in *NAGCP* the court found that all but one of the services at issue were postal because “each clearly involves an aspect in the posting, handling and delivery of mail matter.” 569 F.2d 570, 596.

Like the courts, the Commission itself has assessed the postal or nonpostal nature of various services offered by the Postal Service. In making such assessments, the Commission has evaluated whether the service provides “actual carriage (i.e., collection, transmission and delivery) of mail matter.” Opinion and Recommended Decision, PRC Docket No. R76-1, App. F at 1. The Commission has also looked to whether the service has a direct structural relationship to the provision of postal

services and whether it is a value-added service in which "the locus of the added value is the alternate form of acceptance it provides." PRC Order No. 1145 (Dec. 16, 1996) at 19.

Post E.C.S. clearly meets these tests. Not only is Post E.C.S. "very closely related to delivery of mail," it is the delivery of mail. The dictionary defines mail as, among other things, "messages sent electronically to an individual (as through a computer system)." Merriam Webster's Collegiate Dictionary at 701 (10th ed. 1996). Post E.C.S. constitutes "actual carriage (i.e., collection, transmission and delivery) of mail matter," since the messages and documents it delivers are indisputably mail. Those same materials would be sent by traditional forms of delivery if they were not sent electronically. Indeed, the Postal Service itself touts Post E.C.S. as a substitute for overnight courier services, Exhibit A to Complaint, and has chosen a name for the product -- Post Electronic Courier Service --which confirms that it is a postal courier service.

Recent court decisions have also equated e-mail services such as Post E.C.S. with traditional forms of mail. The United States District Court for the District of Arizona, for example, has stated that "E-mail is, simply, electronic mail. Users have computer addresses to where messages can be sent. Thus, e-mail does not differ substantially from other recognizable forms of communication, such as traditional mail ." *Edias Software Internat'l v. Basis Internat'l*, 947 F. Supp. 413, 419 (1996). See also *American Civil Liberties Union v. U.S. Dep't of Justice*, 929 F. Supp. 824, 834 (1996).

Because Post E.C.S. serves exactly the same function as "traditional" mail -- and especially overnight delivery services such as Express Mail -- there is no doubt that



Post E.C.S. involves precisely those tasks included in the Commission's and the courts' definitions of "mail" or "postal services": collecting, handling, transmitting, and delivering messages. Moreover, Post E.C.S. satisfies the Commission's "structural relationship" test because it bears a direct relationship to the provision of postal services, and it adds value by providing an alternative form of acceptance and delivery to users of overnight and certified mail services,

The Postal Service nevertheless attempts to argue that Post E.C.S. does not satisfy these definitions by stating that Post E.C.S. does not bear "some relation to hardcopy postal delivery networks." Motion at 8. The Postal Service's focus on hard copy is problematic for several reasons. First, despite the Postal Service's unsupported assertion to the contrary (Motion at 8), prior judicial and Commission decisions do not suggest that hard copy delivery is necessary for a service to be classified as "mail" or as "postal" in nature. Nor does the Act itself mention the need for hard copy delivery. To the contrary, Section 403 of the Act provides that the Postal Service shall "receive, transmit, and deliver *written* and *printed* matter, parcels, and *like* materials. ." 39 U.S.C. § 403(a) (emphasis added). If the definition of "mail" or "postal services" under the Act were to include only traditional written or printed mail and parcels, as the Postal Service argues, Congress would not have included the additional, all-embracing language, "like materials" in Section 403(a).

Nonetheless, even assuming the existence of a hard copy were relevant to the definition of postal services, Post E.C.S., as the functional equivalent of traditional written mail, does in fact have an extremely strong structural relationship to traditional, "hard copy" mail. It is a substitute for traditional hard copy mail. And the recipient of

Post E.C.S. documents undoubtedly can print them out and generate a hard copy, if so desired.

The Postal Service itself has repeatedly equated electronic mail with traditional types of mail. For example, the Postal Service has reported that it is developing “‘Postal Electronic Commerce Services’ that will provide security and integrity to electronic *correspondence* and transactions, giving them attributes usually associated with First-Class Mail.” 61 Fed. Reg. at 42219 (Aug. 14, 1996) (emphasis added). It has also described Post E.C.S. as “an *extension* of its traditional paper mail services.” *Id.* (emphasis added). In addition, the Postal Service’s own witness in the Mailing Online proceeding has testified that “In my mind I think of [electronic data] as mail pieces.” Docket No. MC98-1, Tr. 7/1 718. Although this witness stated that he was not drawing a “legal conclusion,” *id.*, his view that information transmitted electronically is mail is nonetheless meaningful in light of the holdings of the courts that the term “postal services” should be given its ordinary meaning. See page 7, *supra*. It is also consistent with a Postal Service institutional response in that docket to an interrogatory where the Postal Service answered that Post E.C.S. will use the San Mateo data center, “as do many other postal applications.” Docket No. MC98-1, Tr. 4/875

Also significant are statements by then Postmaster General Runyon and the Postal Service’s Vice President for Strategic Planning, Robert Reisner, acknowledging the postal nature of electronic services such as Post E.C.S. Both of those high ranking postal officials have equated electronic mail with traditional forms of mail. In particular, Mr. Reisner has explained that

“As the USPS begins to interconnect with its customers-to do traditional postal business on-line – the scope of electronic communications will take an astonishing leap

forward. A hybrid world of electronic and paper communications is already being created by the growth of the networks of the Information Superhighway. When postage is available electronically (later this year), the distinction between snail mail and E-mail will be blurred even further."

*Bush Pilots, Entrepreneurs, Electronic Commerce and the Post*, Robert A. F. Reisner, October 16, 1996, attached hereto as Exhibit A. See also *PMG Runyon Delivers Impact Message to Financial Community*, January 15, 1997 (in which Mr. Runyon referred to a series of electronic commerce services such as electronic postmarking and a customer initiated payment system that "blends the best features of hard copy mail and electronic technology"), attached hereto as Exhibit B. Indeed, as early as 1969, the then Postmaster General of the Post Office Department agreed that "it is likely that a substantial portion of first class and airmail can be handled electronically." *Various Proposals to Reform the Postal Establishment! Hearings Before the Committee on Post Office and Civil Service*, House of Representatives, Serial No. 91-4(a), 91 st Cong., 1 st Sess. at 1224 (1969).

Yet another source indicating that the Postal Service itself considers e-mail to be "mail," as its name implies, is a recent General Accounting Office ("GAO") report. Report on New Postal Products, GAOIGGD-99-15 (Nov. 24, 1998), at 36-37. In this report -- the accuracy of which the Postal Service has expressly endorsed (*id.* at 20) -- the GAO summarizes the Postal Service's views as follows: "The Postal Service views its entry into the electronic commerce market as an *extension of its core business – the delivery of traditional mail. According to service officials, electronic mail has the same attributes as traditional mail. .*" *Id.* at 36. As the GAO states, "PostECS is an electronic service designed to replace traditional overnight courier services." *Id.* at

37. The Postal Service's own advertising makes the same point. Exhibit A to Complaint (explaining that "Post E.C.S. allows you to send and receive your business documents quickly at a substantial cost savings compared to overnight and courier services"). See also U.S. Postal Service Press Release No. 44, May 28, 1998 (statement of Deputy PMG Coughlin that "PostECS is a logical evolution of our original charter to provide seamless communications to our customers"), attached hereto as Exhibit C.

These Postal Service admissions show unequivocally that Post E.C.S. is mail, albeit in a "non-traditional" form. It is just as much of a postal service as is the wholly electronic delivery confirmation service which the Postal Service submitted to the Commission for a recommended decision in Docket No. R97-1.

Moreover, there are strong policy reasons for concluding that Post E.C.S. is a postal service. Excluding this means of communication from the Commission's jurisdiction simply because it uses computers rather than paper to transmit correspondence and other messages would defeat Congress' goal of ensuring that all customers of the Postal Service are treated fairly. As the Commission has repeatedly stated, Congress' paramount concern in adopting the ratemaking provisions of the Act was to prohibit the use of revenues paid by one class of users -- especially First Class letter monopoly mailers -- to cross-subsidize other postal customers. Opinion and Recommended Decision, PRC Docket No. R97-1, at 235. Significantly, from inception through the end of Fiscal Year 1997, the Postal Service has lost in excess of \$20 million in its electronic services. GAO Report, Appendix III at 44-45. This makes clear that without the Commission's input in recommending proper rates for Post E.C.S., cross-subsidy is not only possible, but likely. To hold that Post E.C.S. is not mail would

create a large loophole in the Acts goal of ensuring that the rates paid to the Postal Service by the American public are fair and equitable.

Finally, the Postal Service's half-hearted argument that Post E.C.S. is outside the Commission's purview because it is an international service is frivolous. By the Postal Service's own admission, Post E.C.S. is not merely an international service. Rather, "International electronic document transfers are anticipated to constitute a *significant component* of Post E.C.S. transactions." Motion at 16 (emphasis added). See a/so Exhibit B to Complaint, (explaining that "Banks, law firms and some colleges are using [Post E.C.S.] to send documents nationwide .") (emphasis added). To the extent that the Postal Service is delivering electronic messages from domestic senders to domestic recipients, the Commission has jurisdiction over those transactions.'

For the reasons set forth above, it is clear that Post E.C.S. is a postal service that constitutes a new class of mail. However, should the Commission be concerned that it may not yet have enough information to decide the jurisdictional issue raised by the Postal Service's motion, UPS requests the opportunity to conduct discovery so that the Commission may learn more about the service. Specifically, discovery on the following subjects would be appropriate: (1) the exact service being provided and how it is provided; (2) the content of Postal Service documents concerning the nature of Post E.C.S. and its planning, implementation, and operation; (3) the extent to which Post E.C.S. uses employees and equipment used to provide other services that are

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2. At the very least, UPS is entitled to discovery to determine the extent to which Post E.C.S. messages are sent and received wholly within the United States.


admittedly postal in nature; (4) the effect of Post E.C.S. on the volumes of services concededly classified as postal for which Post E.C.S. is an alternative (including certified mail, Priority Mail, and Express Mail); and (5) the relationship of Post E.C.S. to Mailing OnLine, an admittedly postal service (including the Postal Service's plans to sell and market these services together), and other admittedly postal electronic products such as Post Office Online.

III.

CONCLUSION

WHEREFORE, United Parcel Service respectfully submits that the Commission should deny the Motion of United States Postal Service to Dismiss Complaint.

Respectfully submitted,

  
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Of Counsel

Dated: December 16, 1998

Exhibit A



October 16, 1996

## **Bush Pilots, Entrepreneurs, Electronic Commerce and the Post**

### **Private Interests and Public Responsibilities -- Striking the Delicate Balance**

**Robert A. F. Reisner**  
Vice President for Strategic Planning  
The United States Postal Service

A lively debate has been taking place recently over the future of electronic commerce, albeit within a very small audience. The issues in this discussion involve important values that are basic to all Americans. Concerns with privacy, the role of the government and the protection of individual rights are all topics of ongoing concern and energetic conversation. But the circle in which these issues are being debated is too small.

As we look toward the turn of the century and forecast the impacts of transforming electronic technologies, we need to expand the debate. The entrepreneurs of cyberspace have brought the nation to an extraordinary frontier. But the rules that we write as we settle the electronic frontier will have an impact on core democratic values for decades to come. We need to talk through our next steps very carefully.

The benefits of electronic commerce are frequently heralded in the media. Indeed, for selected segments of the economy, commercial electronic transactions are already here. Each day more Americans communicate important messages with E-mail. Business increasingly relies on electronic data interchange and electronic banking. Many individuals will likely soon follow suit and the benefits of electronic service convenience and economic acceleration will be widely demanded.

The long term inevitability of many of these electronic services is apparent for market reasons in addition to technological possibility. Today, small percentages of the population are active users of on-line services. Yet, the growth of the Internet has shown the potential speed of change. A decade from today, we can expect that the skyline of the electronic society will be clearly seen.

But the problems with the new media are also well known. The early days of the Information Superhighway have produced information glut. The reliability of communications has not measured up to the standards we expect of mainstream commercial channels. And most important of all, commerce has been slow to develop.

The leap from trading messages to buying and selling goods has been blocked by the fear of security threats. To expand from local area networks and bilateral secure communications to wide use of electronic commerce will require a new generation of security services.

### **The Issues**

Here lies the rub. Electronic commerce represents a valuable, and in all likelihood, inevitable service

### **Exhibit A**



that will accelerate the economy and convey many benefits to consumers. We should all be doing everything that we can to encourage its arrival. But the obstacles loom large. Can we really be confident that they will all be removed by entrepreneurial genius? Is this problem one that requires the market making power of the federal government to bring order and to protect individual rights?

The answer from the entrepreneurs who have gotten us here is a resounding "no, keep the government out." Why have the government **try** to do, and some would say, do badly, what the private sector can do? Here is a well-worn theme that finds broad agreement among most Americans. But it is **often** pushed too far. Of course, the federal government should not do the things that the entrepreneurs can do. But the government has often played a key role in developing commerce.

From the creation of the weather service to the development of rural roads to the creation of the airlines, the government--in this case, the Postal Service--has been crucial to development. The stories of the extraordinary daring of the **first** bush pilots whose early air mail services laid the foundation of the airline industry are a colorful metaphor for the exploits of the cyberspace entrepreneurs of today. The dynamics of the development of these earlier frontiers help raise questions for us now--essentially, what should the role of the public sector be?

What if the private marketplace will not get there in time to satisfy the current demand for new electronic services? What then? What if secure electronic commerce is not achievable on a national scale without the assistance and incentives provided by federal effort? What should be the role of the government then?

. *Should the government become a market maker?*

Or, what if the electronic data collected to ensure privacy were to become owned by the next multibillionaire entrepreneur? What if he or she were not a good guy? Will the benefits of electronic commerce continue to develop if confidential personal data is poorly protected or sold to the highest bidder?

. *Should the government be a protector of individual rights on the electronic frontier?*

What if the current problems of protecting security, privacy and individual rights make consumers nervous and the national deployment of electronic commerce is so slow that we clearly see the development of two societies -- one for the information rich and one for the information poor?

. *Should the government not be the **guarantor** of democracy and universal access?*

These questions do not have easy answers. But the fundamental answer -- that there is an important role for both public agencies and private entrepreneurs -- is not difficult to see. Indeed, for electronic commerce to become a reality, the federal government may have to play a major role in facilitating its development.

Even if these three public policy questions do not lead to early collaboration between government and industry, the practical reality of financing development will most likely lead us there. Neither public nor private sector could afford the investment that will be required to develop the networks of the future absent government support, incentives and protections. Whatever the outcome of the policy debate, the infrastructure that will underlie the Information Superhighway will be both a public and a private one.

### The **Unique Case** of the US Postal Service

At the Postal Service, the public policy questions noted above are raised in one way or another, almost every day. Usually they sound more like “what role should the nation’s first communications company play in facilitating electronic security and protecting individual privacy?”

The USPS is almost certainly the **wrong** institution to develop services that can best be developed by innovative entrepreneurs. But at the same time, there is no other agency, public or private, that has the same reach to all parts of society or inherent trust as a third party in the communications system,

Should the USPS be playing a role in easing the transition to the next century? The answer here is surely “yes.” The American people who **own** the enormous national postal infrastructure should expect no less of their company. Here is a classic opportunity to maximize both shareholder **and** customer value.

For over 200 years the Postal Service has built a universal, ubiquitous infrastructure on which the nation’s economy rides. In the 21<sup>st</sup> century, the USPS must continue its mission of ensuring that there is a common infrastructure that can bind the nation together no matter who else (public or private) shares this burden. What is not **often** appreciated is that the 21<sup>st</sup> century infrastructure will be part electronic and part hard copy.

Postal Service’s entry into the electronic marketplace would be necessary even if the goal were merely to help mailers of letters and packages do business more **efficiently**. The old paper versus electronics debate misses the point. Unfortunately, this discussion is often obscured by a misunderstanding of the fact that the Postal Service is already an electronic institution. The critics who would say that “snail mail should be reserved for paper” do not understand that the Postal Service moves 180 billion pieces of mail and packages every year by means of the **largest electronic** automated sortation and processing system in the world. The equivalent of the **fifth** largest telephone network in the world sustains this system within the USPS and it is about to get larger.

As the USPS begins to interconnect with its customers -- to do traditional postal business on-line -- the scope of electronic communications will take an astonishing leap forward. A hybrid world of electronic and paper communications is already being created by the growth of the networks of the Information Superhighway. When postage is available electronically (later this year), the distinction between snail mail and E-mail will be blurred even further.

One illustration of the way in which the USPS is changing is seen in a very exciting demonstration that we are announcing here at the Internet Expo. With Sun Microsystems, we have developed a new system for creating on-line transactions for mailers. Using Java to download software from the USPS web page, the mailer can enter mail in the postal system using a new generation of smart forms. The electronic postmark being demonstrated here on the floor of the convention takes the concept even further. The Postal Service has been urged by many of our customers to carry our mission into cyberspace. We can use electronic tools to help create electronic commerce even as our customers demand that we create new services to make hard copy mailing easier, more efficient and secure.

So the Postal Service is today working with federal agency partners, financial institutions and law firms to develop an electronic commerce system that guarantees privacy and individual rights, and mitigates the damage that electronic commerce may do to a democracy made up of information haves and have nots. By creating electronic commerce for every man, protecting access for all citizens, we

believe we can perform a service that is valuable for the entrepreneur and the American people at the same time.

Remember the pilots who returned **from** World War I and then risked their lives in an even more dangerous duty. Every night they flew without instruments or maps to unimproved airfields. They took off, even in terrible weather, just to prove that airmail was a reliable service. To keep these daring pilots alive, the Postal Service had to create parts of what we know as the Weather Service today. Navigation aids had to be developed. Flying became commercial.

We are watching many of these same dynamics today. Earlier experience tells us that this is a public and a private job. Given this, why not change our business model? Why not have the USPS brand internet services that we license from entrepreneurs, the bush pilots of cyberspace? Working together, in unique new public - private partnerships that serve democratic values, anything is possible.

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January 15, 1997

FOR IMMEDIATE RELEASE

Release No. 7

Internet: <http://www.usps.gov>

### **PMG RUNYON DELIVERS IMPACT MESSAGE TO FINANCIAL COMMUNITY**

CHICAGO — To the nation's financial community, a message from Postmaster General Marvin Runyon: "The U.S. Postal Service today is a business--a big business--that directly affects the success of the companies and businesses" of America.

"We're not the same old Postal Service, we're running like a business and getting results," Runyon told an audience of top financial analysts and portfolio managers assembled here today.

"Some of America's biggest companies are America's biggest mailers," Runyon proclaimed. "But some eight million small businesses also need the mail to keep their businesses running, to prospect for customers, and bill the ones they have."

He pointed out that 96 percent of today's mail is business-oriented, much of it business-to-customer and back again.

"Trillions of payment dollars flow safely and efficiently through the mail every year," Runyon said.

The Postal Service has achieved "the best financial one-two punch" in its history, earning nearly \$3.4 billion in record net income the past two years, the postmaster general said.

And, while the Postal Service faces its toughest competition today, Runyon projected continued success as the agency delivers for America now and in the century ahead.

In fiscal year 1996, the Postal Service achieved its second most profitable year with net income of \$1.6 billion on record total operating revenue of \$56.4 billion. That would make the Postal Service the ninth largest domestic company in the Fortune 500 rankings and 29th on the Fortune Global 500 of the world's largest corporations. In 1995, the Postal Service's all-time high in net income was \$1.8 billion.

Of the Postal Service's six major product lines, three would qualify "independently" as Fortune 500 companies, Runyon pointed out.

Also, the agency achieved record service performance in 1996, attaining a national average of 91 percent on-time delivery of local First-Class Mail--exceeding the goal of 90 percent.

Mail volume climbed to a record 183 billion pieces--603 million pieces daily--and the Postal Service handled 43 percent of the world's mail in 1996.

Direct mail is the Postal Service's fastest growing business and is gaining market share, now almost

Exhibit B

even with television and newspapers, Runyon continued. He added that a recent study showed domestic direct marketing sales totaled \$400 billion in 1996. The figure is expected to reach over \$500 billion by the year 2000.

Runyon also foresees continued growth in the two- and three-day Priority Mail market, which is running about 13 percent ahead of a year ago in volume and up more than 12 percent in revenue in the first quarter of 1997. In addition, he projects significant growth in international mail, citing an agreement with China that opens the door to 1.3 billion potential new customers.

The postmaster general made it clear the Postal Service is "not sitting idle, watching the marketplace evolve without us" because of innovations in technology.

"We're taking steps to generate new revenue from our familiar products and new products for the future," Runyon said, including modern retail looking postal stores, Post **Office** Express retail outlets in chain stores, self-adhesive stamps and a more customer-friendly rate structure that has enabled major mailers to reduce their postage costs and given the Postal Service mail that's easier and cheaper to process on automated equipment.

He also cited a series of electronic commerce services such as electronic postmarking and the customer initiated payment system that "blends the best features of traditional hard copy mail and electronic technology."

"To keep the momentum going, we recognize that we have to keep getting better," Runyon said. "We must compete for every message and package we deliver if we're to build on our success."

One of the ways the Postal Service is getting there is through an aggressive capital investment plan. "Our capital budget calls for investments of \$6 billion in 1997 and \$14 billion over the next **five** years," Runyon said. "These investments will pay off with better service and satisfied customers."

Accompanying the postmaster general at the financial analysts' briefing, Chief Financial **Officer** Michael Riley noted that the \$6 billion the Postal Service is committing on capital projects in 1997 is more than three times the average spent from 1990 to 1995.

"The subsequent two years of record profits have given us the ability to accelerate our investments in capital equipment, buildings and high-tech equipment," Riley said.

"Steady rates and improving service, while controlling expenses, are clear indicators of our excellent progress in running the Postal Service as a business," he added.

Runyon emphasized that the corporate decisions made by the Postal Service and the products and services it buys directly affect American business and industry

He indicated that the Postal Service is the "biggest customer for a lot of companies," and is the largest buyer of materiel-handling equipment in the United States. Also, the Postal Service is the largest customer of the airline industry, paying more than \$ 1 billion annually to move mail by air throughout the country.

Additionally, the Postal Service issued 46,000 new contracts and modifications valued at nearly **\$7** billion to large and small companies.

To gain flexibility in order to be more competitive, Runyon said, "We're working with House and Senate leaders to change the law governing the Postal Service, so we can offer volume discounts, introduce new products faster, and streamline the price-setting process.

"We look forward to working with the new Congress to create legislation that serves the best interests of the American people."

"We've taken some giant steps toward excellent service, and we're getting results," Runyon proclaimed. "And the best news is, 'you ain't seen nothing yet!'

"We plan to achieve an historic three-peat-- three straight years of profits, coupled with new records in service performance."

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## Exhibit C







May 28, 1998  
FOR IMMEDIATE RELEASE  
Release Number 44  
USPS Web Site: <http://www.usps.com>

**LOOKING TO THE FUTURE, POSTAL SERVICE TO TEST  
ELECTRONIC COURIER SERVICE**

WASHINGTON — Responding to increased customer demand for the secure transmission of documents via the Internet, the U.S. Postal Service today announced a cooperative agreement with the Canadian and French postal administrations to conduct an operations test of a new global electronic courier service. Known as PostECS, the new service is being developed under the leadership of the Brussels-based International Post Corporation (IPC), and will include such elements as document encryption, password protection, and real-time tracking and tracing capabilities. In the future, PostECS may also integrate public key cryptography, digital signature and proof of delivery and receipt.

"The Postal Service is working to deliver the same reliability, privacy, and security in electronic communications that we have been delivering in traditional communications for more than 200 years," said Michael S. Coughlin, Deputy Postmaster General, who represented the U.S. Postal Service at the IPC Board of Directors meeting held in London this week. "PostECS is a logical evolution of our original charter to provide seamless communications to our customers."

Throughout history, the participating postal administrations have played key roles in the development and support of industry and commerce by providing dependable and trusted communication infrastructures. Subsequently, the postal administrations have defined the highest standards of security, privacy, reliability and universality that have become the foundation of worldwide business communications today.

"The Posts have for centuries been the movers of information. We were the information highway eons before the term was made fashionable," said Georges Clermont, President and Chief Executive Officer, Canada Post Corporation. "Canada Post has earned the trust of Canadians in physical delivery of the mail, and we will extend that same trust into electronic delivery of the mail as we continue to evolve our service offerings to meet the changing needs of our customers."

"La Poste is pursuing the goal of serving its customers in the area of electronic courier, with the same requirements for speed, confidentiality, and identification of sender and receiver, that are inherent to physical mail," said Claude Bourmaud, President, La Poste. "Because our customers expect our service to meet these requirements, it is natural that La Poste participate."

Exhibit C

"The Internet is a world-wide communication phenomenon and it is essential that the Posts act together when deploying services and systems that leverage this new medium," said Yves Cousquer, IPC President and Chief Executive Officer. "IPC is pleased to lead this cooperative initiative by a group of Posts committed to electronic services, and to facilitate its extension to many other Posts."

The International Post Corporation is a cooperative organization of 21 postal administrations in Europe and North America. Its main focus is on international mail service quality improvement and the use of new technologies to support existing and new services.

Canada Post Corporation (CPC) is in business to serve 30 million Canadians and more than 900,000 businesses and public institutions, totaling the number of deliveries to over 12.5 million addresses in Canada. Its mail processing and distribution systems are considered amongst the most sophisticated in the world. There are more than 20,000 retail points of purchase where customers can access postal services. CPC processed over 9 billion pieces of mail during the 1997-1998 year.

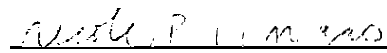
With over 300,000 full-time employees, La Poste processes over 22 billion pieces of mail per year. Together with its subsidiaries, La Poste generates 89 billion French Francs in annual sales, including 68 billion French Francs for mail and parcels, and 21 billion French Francs for financial services.

Chartered in 1775 to bind a new nation together to support the growth of commerce and to ensure a free flow of ideas and information, the United States Postal Service today, 223 years later, processes over 43% of the world's mail volume -- approximately 182 billion pieces of mail per year, about 603 million pieces per day. With a national delivery network reaching nearly 130 million addresses nationwide, *Fortune* magazine has ranked the U.S. Postal Service 29<sup>th</sup> on a list of the world's largest corporations.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.

  
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Nicole P. Kangas

Dated: December 16, 1998  
Philadelphia, PA